



State of Idaho

DEPARTMENT OF WATER RESOURCES

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MEMORANDUM

TO: Water Management Division Staff

FROM: Norman C. Young *NCY*
Administrator

DATE: April 22, 1994

SUBJ: WELL DRILLING ENFORCEMENT POLICY MEMORANDUM NO. 5
(Supersedes Memo of September 29, 1992)

GENERAL

The well driller rules include a number of penalty and enforcement provisions. This memorandum provides guidance for the application of the enforcement and penalty provisions to provide uniformity. It is not intended that the application of this guidance be so rigid as to limit the discretion of the field specialists and region managers to resolve enforcement problems.

The following types of violations are addressed in this memo:

1. Construction of one or more wells in Idaho without first obtaining a proper Idaho well drillers license or operator's permit.
2. Construction of a well without: 1) first obtaining or verifying the existence of a written or verbal drilling permit; 2) securing a verbal drilling permit; 3) violating terms of conditions of the drilling permit.
3. Failure to properly prepare, sign and submit the well driller's report to the director within 30 days following the completion of the well.
4. Construction of a well in violation of the Well Construction Standards.
5. Construction of a low-temperature geothermal or geothermal well without proper bonding for the driller.

6. Knowingly submitting a well driller's report with inaccurate or false information.
7. Failure to keep a current written well driller's report at the drilling site describing well construction detail, water bearing zones, lithologic changes and other pertinent information [42-238(3)].
8. Miscellaneous provisions such as no plate or number on drill rig, and/or failure to have driller's license card or operator's permit card on site, and/or no proof of drilling permit or drilling permit number (verbal) at well site, and/or misrepresentation of information to the department.

REGION OFFICE RESPONSIBILITY:

Region office personnel are to document in writing and with evidence as necessary, to the driller's license file failures of a driller, operator, or owner to comply with statutes or regulations. Region staff has the discretion to issue a verbal or written warning for violations considered to be simple oversights that are of a non-repetitive and minor nature that do not pose a significant threat to the resource or the orderly enforcement of the driller licensing and well construction standards program. Verbal warnings should be documented by a memorandum to the driller's file.

If it is determined by region staff that one or more violations of items 1 through 8 have occurred that require more stringent enforcement, the region manager is authorized to initiate enforcement through either a warning letter, notice of violation, a cease and desist order, a late fee (refer to schedule in I.b.) or a suspension of privileges such as verbal permitting, drilling in a Ground Water Management Area or geothermal areas. Specifically, designated region staff are authorized to issue uniform citations to enforce violations of item 1 described above. The procedure for initiating these actions are hereafter described.

I. WARNING

A. Documentation

For self-reported, infrequent paper work violations and first-time violations, the region manager or his agent will make a documented verbal warning. A letter to the driller and driller's file may follow the verbal warning or may be sent instead of a verbal warning. The verbal warning or warning letter to the driller should clearly describe the infractions and require corrective action within a specified time. A written Cease and Desist Order should be considered a warning letter. Every effort should be made at this level of enforcement to assist the driller to avoid future violations and to build a rapport with the driller. Communication is a principle directive to encourage cooperation.

B. Late Fees

Late fees should be sought for self reported violations such as late well driller's reports or late drilling permit applications and fees associated with verbal authorization of drilling permits. The region manager should seek the late fee, to be paid to the department, on or by a specified date, according to the following schedule:

Late Fee Schedule (days after completion of well):

31 days or more past the date the well was completed - \$25/well driller's report.

31 days or more past the date the verbal permit was issued - \$25 + fee / drilling permit fee not paid.

No further enforcement action will be taken for self-reported late documents if late fees are paid at the time the late verbal drilling permit application and fee or driller's report is submitted within the time frame described above. If the late fees are not paid, a warning letter or notice of violation should be sent. The late fee may be waived if the driller has requested in writing within 30 days of completion of the well an extension of time within which to file a well driller's report and describes an acceptable reason for the delayed filing.

Late fees are only to be charged in the case of self-reported filing by the driller. If the department determines that a report has not been timely filed and requests it from the driller, a notice of violation can be issued and a penalty sought in addition to submittal of the drillers report within a specified time.

C. Verbally Authorized Drilling Permits

The verbal drilling permit authorization is a convenience provided to the driller to assist service to the public. The verbal authorizations are to be given only to Idaho licensed well drillers and not to well owners. The driller is responsible for the timely submission of all drilling permit applications and fees relative to any verbally authorized drilling permits provided to the driller. If a driller, after being requested to pay a late fee, continues to send well documents into the department late, the driller should be sent a written warning. If the driller continues to send in delinquent drilling permit applications and fees, or refuses to submit the late fees, after receiving a written warning, the verbal authorization convenience should be suspended. A letter should be sent to the driller and a copy sent to the driller's file at the state office describing the cause for suspension and the terms. Suspension of the convenience should not be for less than 3 months. The driller must request reinstatement in writing after the suspension period, or suspension will continue. This suspension of privileges may be a provision of the notice of violation.

Authorization for other requested drilling activities, such as drilling for low temperature geothermal wells, geothermal wells, or areas of drilling concern, can be withheld if the prior activities of the driller or operator reveal a continued unwillingness or inability to comply with department rules or permit conditions or to protect the ground water resources

II. NOTICE OF VIOLATION

For serious¹, repeated² or willful infractions the region manager is authorized to commence an administrative enforcement action by issuing a written notice of violation which will be sent to the driller by certified and regular mail or personal service.

- A. The notice of violation shall: 1) specify the alleged violation, the appropriate subsections of Idaho Code 42-238 and Rules that have been violated; 2) identify the appropriate corrective action; 3) provide opportunity for a compliance conference, and request a civil penalty to be paid in lieu of a civil enforcement action.³
- B. The driller has 15 days from receipt of the notice of violation to contact the region office and request in writing a compliance conference.
- C. If the driller submits a written request for a compliance conference within 15 days, the region manager will schedule the conference within 20 days unless a later date is agreed upon between both parties.
- D. If the driller and region manager come to an agreement during the compliance conference, they should enter into a consent order formalizing their agreement. The consent order may include provisions for payment of an agreed penalty to the department and other actions necessary to bring the well into compliance with standards and to avoid a repeat violation. Compliance with the agreement by the driller shall preclude the department from seeking a penalty through civil enforcement action for this alleged violation.

¹ A serious infraction is one that directly affects or may directly adversely affect the health and safety of humans or animals or causes or may cause violations of water quality standards

² Repeat infraction - violation of the same item from the list of items on page 1 after receipt of a written warning, or a previous notice of violation

³ The director/department has no authority under the statutes to impose a fine, rather he may seek a civil penalty through the compliance conference in a consent order providing for payment of an agreed civil penalty. Absent an agreement or if the penalty is not paid as agreed, the department may collect the penalty through an action in district court.

If the driller and region manager are unable to reach an agreement during the compliance conference, the driller may request a hearing before the director.⁴ The request for a hearing before the director must be submitted in writing to the director within 15 days of the date of the compliance conference.

- E. If the driller does not request a compliance conference within 15 days of receipt of the notice of violation, or an additional period of time as allowed by the region manager, for good cause, or if the consent order is not complied with, or if an agreement cannot be reached, the region manager will forward the file to the state office for action.
- F. If the driller submits a written request for a hearing before the director within 15 days of the date after the compliance conference is held by the region manager, the state office will schedule the hearing within 20 days of receipt of his written request.
- G. If the compliance conference does not resolve the violations and if the driller does not request a hearing before the director within 15 days after the scheduled compliance conference, the state office may initiate a civil enforcement action through the Attorney General to recover a civil penalty or may revoke the driller's license, or take other appropriate action as stipulated in 42-235 and 42-238, Idaho Code. The civil enforcement action must be commenced and prosecuted in the District Court in the county in which the alleged violation occurred.
- H. Recommended schedule of penalties to be sought by the department through notice of violation. The schedule is intended to provide uniformity, but the amount may be adjusted because of mitigating factors determined at the compliance conference or hearing. If a violation is particularly serious or flagrant, the notice of violation may include a higher penalty if provided by law and coordinated with the division administrator.
 - 1. Constructing one or more wells without a valid well driller's license or operator's permit. [42-238(2)] \$1,000/well
 - 2. Constructing a well without first verifying the existence of a valid written or verbal drilling permit. Refer to 42-351-352 (if non-domestic refer to Water Right also) [42-238(4) - Well Construction Standards - Rule 37.03.09.050] \$500/permit

⁴The hearing before the director is to be scheduled only if agreement cannot be reached in the compliance conference, and the driller specifically requests it.

3. Failure to submit a well driller's report within 30 days following completion of drilling a well. (Completion of a well is defined as removal of the drill rig from the site. \$100/report
(Can be grounds for civil penalties of up to \$10,000 & suspension of license until such time as the late or missing well driller's reports are submitted to the department.)
4. Well construction standards violation. \$100 to \$500/well,
Suspension of license until such time as the construction violation is repaired.
5. Constructing a low temperature geothermal or geothermal well without proper bonding. \$1,000/well
(This does not apply if the encounter of water over 85° is accidental and the driller ceases drilling and immediately notifies the department.)
6. Miscellaneous provisions \$100/occurrence
(Examples: no plate or other identification identifying the driller's license number or firm name on the drill rig which is being used to construct a well; no proof of existing drilling permit or drilling permit number [verbal] at well site; drilling without a driller's license or operator's card at site; submitting drillers reports with incorrect legal description.)
7. Intentionally submitting false or inaccurate information on a driller's report. *Civil Penalty/
& suspension of license not to exceed 1 year.

*or as provided for in 42-238(5) depending on circumstances.

	<u>Penalty</u>	<u>Suspension</u>
First Offense	\$2500	90 days
Second Offense	\$5000	6 months
Third Offense	\$10,000	year

8. Violation of a cease and desist order. \$1,000/day

III. CEASE AND DESIST ORDERS

A. Administrative Action

For: 1) persons drilling without a license (particularly Idaho residents), 2) drilling without a drilling permit, 3) drilling with unidentified equipment (Driller's name or plate number will constitute identified), or 4) in well construction or operation situations involving immediate threat to the groundwater resource or public health, the region manager or his agent may issue an order to Cease and Desist. The order to Cease and Desist can be issued on a standardized form to allow for expeditious and proper notification and need not be issued with a notice of violation or written warning. A notice of violation or written warning should soon follow a Cease and Desist order. If a Cease and Desist Order is issued in a notice of violation, and the violation is not corrected, the offense will be considered a continuing violation in connection with which the department may seek a civil penalty of \$100.00 a day. In the case of immediate threat to groundwater or public health or safety associated with well construction or operation, the well driller and/or owner should be given no more than 24 hours from receipt of order to Cease and Desist. The order to Cease and Desist need not be signed by the driller. Region staff will make an effort to advise the driller in person or by phone of the order, but the Cease and Desist should be posted in a conspicuous place at the construction site and a copy mailed to the driller. (These Cease and Desist Order forms will be provided by the state office.)

- B. Civil Enforcement of Cease and Desist (Refer to VI. Civil Enforcement Action). A temporary restraining order or preliminary injunction can be sought through Civil Action in District Court when deemed necessary by the director in very serious or threatening situations.

IV. UNIFORM CITATION

In the case of a person drilling a well without a valid Idaho well driller's license, a region agent specifically designated by the division administrator or director has the option to issue an Idaho Uniform Citation, pursuant to Idaho Code Section 42-238(5).

STATE OFFICE RESPONSIBILITIES

If the region manager determines that the driller has violated Idaho statutes and/or department Rules, and sends written warnings and/or notices of violation to the driller and the driller is uncooperative with the region office efforts to elicit willful compliance through those notices and compliance conferences, the region manager will forward a documented report describing the infractions to the state office for review and action. Willful compliance will mean the driller and the region manager have entered into an agreement of compliance or consent agreement and the driller has performed according to the terms of the agreement.

I. SUSPENSION AND REVOCATION OF DRILLER'S LICENSE BY STATE OFFICE

A. Administrative action by the State Office may include, but is not limited to:

- 1) Utilization of bond for reconstruction, abandonment or securing information.
- 2) Suspension of driller's license for: 1) Failure to submit a properly prepared and signed well report to the department within 30 days; 2) failure to construct a well that meets minimum well construction standards.
 - a) Term or suspension - Suspension of driller's license can remain in effect only until such time as the driller has submitted the late or missing well reports or the driller has repaired or reconstructed the well so the well meets the minimum well construction standards.
- 3) Revocation of driller's license for a period not to exceed 1 year for drillers who intentionally submit false or inaccurate information on a driller's report.

B. If action against the driller's license is determined to be warranted, the state office will send the driller an order describing the cause for suspension, revocation or non-renewal of his driller's license and the terms.

C. Prior to the driller's license being suspended, revoked or not renewed, the driller will be entitled to a hearing before the director. The driller will have 15 days from receipt of the order to make a request in writing for a hearing. If after 15 days no request for a hearing is made, the order shall become immediately effective. The order will inform the driller of his right to a hearing.

- D. Drillers whose licenses have been suspended or revoked may apply for reinstatement no sooner than the report(s) are properly corrected and on file, or other well construction violations are resolved.

II. CIVIL ENFORCEMENT ACTION

The director (state office) may, when deemed in the public interest, initiate civil enforcement action through the Attorney General as provided for in the Groundwater Protection Act of Idaho Code and shall not be required to initiate an administrative action before initiating the civil enforcement action [42-238(b) Idaho Code].